IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 241 AND 250 OF 2000

1. State of Goa,
   through the Dy. Collector &
   SDO Ponda Sub-Division,
   Ponda, Goa.

2. Assistant Defence Estate
   Officer, having his
   office at Panaji, Goa. ... Appellants.

VERSUS

M/s. Matches Goa Pvt. Ltd.,
having his registered office
at Curti, Ponda, Goa. ... Respondents.

Shri S.R. Rivonkar, Government Advocate for the Appellants.

Shri V.B. Nadkarni, Senior Advocate with Shri J. Cardozo, Advocate for the Respondents.

FIRST APPEAL NO. 250/2000

M/s Matches Goa Pvt. Ltd.,
registered office at Curti,
Ponda. ... Appellants.

VERSUS

1. Deputy Collector & SDO,
   Ponda Sub-Division, Ponda,
   Goa.

2. The Asst. Defence Estate
   Officer, Coelho Pereira Bldg.,
   IIIrd Floor, Dr. Vaidya Road,
   Panaji, Goa.

3. Commanding Officer,
   6TTR (2STC) having its
   office at Velho, Panaji. ... Respondents.

Shri V.B. Nadkarni, Senior Advocate with Shri J. Cardozo, Advocate for the Appellants.

Shri S.R. Rivonkar, Government Advocate for the Respondents.

CORAM: P.V. HARDAS &
N.A. BRITTO, JJ.

DATE: 10TH AUGUST, 2004.

ORAL JUDGMENT **(PER BRITTO, J.)**

Both the parties in LAC No.61/91 have filed the present appeals against the judgment/award dated 31.7.2000 of the learned District Judge, Panaji.

2. Some facts are required to be stated to dispose of the said appeals.

3. By virtue of a Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (Act, for short) and published on Government Gazette dated 13.12.88 the Government acquired about 38,325 sq.m. of land from survey Nos.64 and 65 of Curti, Ponda for additional area for 6 TTR (2 STC) at Curti, Ponda belonging to the applicant – M/s. Matches Goa Pvt. Ltd. (Applicant, for short) and the learned L.A.O. by his Award dated 23.11.1990 awarded to the Applicant compensation at the rate of Rs.40/- per sq.m. to the land under Survey No.65 and Rs.20/- per sq.m. for the land of Survey No.64.

4. Dissatisfied with the said award, the applicant got a reference made under Section 18 of the Act, claiming compensation at the rate of Rs.350/- per sq.m. In support of the said reference, the applicant produced three sale deeds. The first was a sale deed dated 23.5.88 of a plot admeasuring 500 sq.m. which

was sold at the rate of Rs.300/- per sq.m. (Exh.AW.1/B). The second was a sale deed dated 11.1.89 of a plot admeasuring 403 sq.m. (Exh.AW.1/C) which was sold at the rate of Rs.250/- per sq.m. The third was a sale deed dated 3.10.1988 of a plot admeasuring 288 sq.m. (Exh.AW.1/D which was sold at the rate of Rs.416/- per sq.m. The applicant examined AW.4 in support of the sale deed dated 3.10.88 (Exh.Aw.1/D) and Aw.5 in support of the sale deed dated 11.1.89 (Exh.Aw.1/C). The applicant also examined two experts, namely, Aw.2 Architect Shri Bhobe and AW.3 Shri Nagarsenkar, and also produced an award in LAC No.58/91 by which compensation was fixed at the rate of Rs.133/- per sq.m. in respect of an area of No.2872.25 sq.m. of the said survey No.65.

5. The learned District Judge took the sale deed dated 11.1.89 (Exh.Aw.1/C) as a guide and after taking total deduction of 65%, worked out the market price at Rs.162.50 for the entire land of the applicant.

6. Referring to the award in LAC No.58/91 (Exh.Aw.1/E) the learned District Judge observed that while fixing compensation at the rate of Rs.133/- per sq.m. he had taken into consideration a sale deed dated 28.5.85 wherein a developed plot of land was sold at the rate of Rs.200/- per sq.m. and that after

deducting 1/3 towards development charges from the said rate of Rs.200/- per sq.m. he had fixed Rs.133/- per sq.m. as the market rate, but since later on he had come across another decision of this Court in the case of **State of Goa v. Olga Seco Gomes da Costa** (1998 (1) Goa L.T. 324) wherein this Court had taken a deduction of 40% towards development charges, he proceeded to take deduction of 40% for development instead of 1/3 as was done by him in LAC No.58/91 and then took a total deduction of 65% before fixing the market value at Rs.162.50.

7. Both the parties have relied upon three judgments of this Court delivered by one of us (Britto, J.). All the said three judgments pertain not only to the same Notification, but also to the same Survey number. The judgment in F.A. No.31/98 in the case of State of Goa and Anr. v. Smt. Ramabai N. Ghode and others arose from the said LAC No.58/91. In this case a total deduction of 40% was taken towards development and the compensation which was fixed at Rs.133/- by the learned District Judge was reduced to Rs.120/- per sq.m. in respect of an area of 2872.25 sq.m. In F.A. No.26/98 in the case of M/s. Lakshon Electronics Pvt. Ltd. v. Deputy Collector and anr. the compensation which was enhanced by the learned District Judge to Rs.105/- was reduced by this Court to Rs.44/- per

sq.m., again for an area of 2872.25 sq.m. This was done because the said applicant-M/s. Lakshon Electronics Pvt. Ltd. had themselves purchased the said property earlier by deed dated 5.3.1985 at the rate of Rs.32/- per sq.m. In F.A. No.46/98 in the case of State of Goa and anr. v. Smt. Radhabai V. Ghode and ors. the compensation which was enhanced to Rs.147/- per sq.m. was again reduced by this Court to Rs.132/- per sq.m. by again taking a total deduction of 40% from the price of sale deed dated 17.10.80.

8. The first controversy which requires to be settled is regarding the measurements of the acquired land involved in this case. As already stated as per the award of the LAO dated 23.11.90 the Government acquired 28,575 from survey No.65 (part) and 9750 sq.m. from survey No.65 (part) but according to the applicant an additional area of 840 sq.m. from survey No.65 (part) 415 sq.m. from survey No.64 (part) and 1750 sq.m. from survey No.62 (part) had also been taken in possession. In other words, according to the applicant 3005 sq.m. were acquired in addition to the admitted area of 38,325 sq.m. To support their case on this aspect, the applicant examined AW.2 Architect Bhobe. The learned District Judge accepted the evidence of Aw.2 Shri Bhobe as far as the area of survey nos.65 and 64 were concerned but as far as the area of Survey

No.62 was concerned, the learned District Judge observed that since there was no reference made by the Deputy Collector and SDO with regard to survey No.62, he had no jurisdiction to deal with the same and therefore the applicant might have to take recourse to other proceedings.

9. Shri Rivonkar, the learned Government Advocate was inclined to make a concession as far as the area of survey no.65 is concerned and submitted with reference to the first report given by Shri Bhobe that he had given no calculation as regards survey No.64. However, we find that there was no mention made regarding the exact excess area in the application for reference made by the applicant. There was also no dispute regarding the additional area when Shri Bhobe prepared his first report on 29.9.94. The additional area claimed appeared to have been included by virtue of an amendment carried out only on or about 27.1.97 after the second report dated 31.8.1996 was prepared by Shri Bhobe. All that AW.2 Shri Bhobe stated in his evidence before the court is that the acquired property was physically surveyed in his presence on the basis of identification marks installed along the boundary of the acquired land. AW.1 Devidas had also stated that they had asked their Surveyor to check the area. However, it is not the case of Aw.2 Shri Bhobe that he

had inspected the acquisition plan. The applicant did not also examine the surveyor who had physically surveyed the excess area in his presence nor the said surveyor as well as Shri Bhobe made any attempt to prepare a plan showing the excess area in relation to the acquisition plan. This much was certainly expected from Shri Bhobe who claims to be an expert. In our view, the applicant failed to produce best available evidence regarding the excess acquired area as claimed by the applicant. The onus was certainly on the applicant to show what was the excess area whether acquired or whether otherwise occupied by the Government. In our view the applicant failed to discharge the said onus and therefore the award of the learned District Judge as far as the additional area claimed by the applicant is concerned, certainly deserves to be set aside.

10. Shri Nadkarni, the learned Senior Advocate, on behalf of the applicant first referred to the case of **Union of India v. Shri Dhyan Singh and others** (2000 AIR SCW 4936) and submitted that in this case the compensation could be paid to the applicant of Rs.132/- per sq.m. as was done in F.A. No.46/98. Then he referred to the case of **Bhim Singh and others v. State of Haryana and another** (AIR 2003 S.C., 4382) **and** submitted that the mean price awarded by this Court in

F.As. No.31/98 and 46/98 be awarded to the applicant, as the judgments in both the said First Appeals pertain to the same Notification as well as the same survey number.

11. In the case of Union of India v. Shri Dhyan Singh (supra) the Supreme Court observed that:-

> " In view of the decision of this Court in Civil Appeal No. 4405 of 1997 in which the land value has been fixed at Rs.16,750/- per bigha for lands covered by the same notification there is no reason not to adopt the same value as for the land involved in this appeal also. ".

The Supreme Court therefore proceeded to award the value which was awarded in Civil Appeal No. 4405 of 1997.

12. In the case of **Bhim Singh and others** (supra) the Supreme Court observed that:-

> " Even otherwise when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding this Court has already approved the rate fixed then in our view

> the best method would be to look at the earlier judgments and Awards. Therefore the High Court cannot be faulted for having fixed compensation on the basis of earlier judgments. "

13. On the other hand, Shri Rivonkar, the learned counsel, placed reliance on the case of **M/s. Printers House Pvt. Ltd. v. Mst. Saiyadan (deceased) by L.Rs. and others** (A.I.R. 1994 S.C., 1160) in support of his proposition that different rates or market value could be awarded in cases which are covered by the same Notification. In this case (M/s. Printers House Pvt. Ltd.) the Supreme Court observed that :-

> " If 'Comparable Sales Method of Valuation of land' is adopted for determining the market-value of an acquired plot of land, it generally holds good for determination of the market-value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary Notification. But, if any of the factors, such as, location, shape, size, potentiality or tenure of one plot of acquired land widely differs from the other plot(s) of acquired land (s), then the market-value of each plot of land acquired has to be determined independently of the other(s) even if all of them had been acquired pursuant to the same

> preliminary Notification. The reason is not far to seek since the differential factors relating to different acquired plots greatly affect their value. Hence, if any salient factor or different acquired plots of land, which greatly affects their value is ignored or is not taken into consideration by the Court while determining the market-value of acquired lands, it will have failed to apply the correct principle of valuation adoptable in valuation of different types of acquired lands."

14. The next submission of the learned counsel, Shri Rivonkar, is that the compensation for the acquired land could be fixed by averaging the prices of Rs.120/- (in F.A.No. 31/98) and Rs.132/- (in F.A. No.46/98) and then by taking a deduction of 40%. This submission is to be accepted only to be rejected. As submitted by Shri Nadkarni, the learned Senior Counsel, and in our view rightly, the prices fixed of Rs.120/- and Rs.132/- are in respect of undeveloped land and therefore there is no question of taking any further deduction.

15. We are also unable to accept the submission of Shri Nadkarni that the price in this case should be fixed at the rate of Rs.132/- per sq.m. on the basis of the judgment of this Court in F.A. No.46/98. If

the said submission is accepted, then one may tend to ask as to why the price to be fixed should not be Rs.120/- per sq.m. on the basis of F.A. No.31/98. We are also not inclined to take out a mean of the three prices fixed in the judgments in the said three appeals and award the same as compensation to the applicant, for in that event, the applicant would not be adequately compensated.

16. In our view the approach of the learned District Judge per se cannot be termed to be wholly incorrect. The learned District Judge came to the conclusion that on the basis of the evidence that there was no distinction made regarding the nature of land of both the survey numbers involved in this acquisition, (S.Nos.64 and 65) the conclusion which has not been assailed on behalf of any of the parties. The learned District Judge was certainly justified in using the sale deed (Exh.AW.1/C) as an indicium for fixing market value of the acquired land. Although the said sale deed dated 11.1.89 - Exh.AW.1/C on the face of it appeared to be a post notification sale deed, part price was paid towards the same on 16.11.1988. This payment is reflected in the said sale deed in support of which the applicant had examined its buyer AW.5 Shanta. This sale deed was also in respect of the applicant's property but surveyed under No.70.

However, in our view the deductions taken by the learned District Judge appears to be on the higher side. In F.A. No.31/98 a deduction of 40% was taken considering that there was a gradient for the land of survey no.65/1 and the sale deed relied upon was of a comparatively smaller area. The same deduction of 40% could be taken in this case as well. A further deduction of 10% can also be taken because the acquired property as compared to the plot of sale deed dated 11.1.89 (Exh.AW.1/C) was very much larger. A catena of decisions of the Supreme Court shows that when market-value is to be determined on the basis of small plots of land, the same price cannot be expected to be realised when large track of land is offered by a willing vendor to a willing purchaser. If the applicant was to carve out several plots, then the applicant would certainly have some waiting time to sell the same. In our view, therefore, the market value of the acquired land ought to have been fixed by taking a deduction of 50% only based on the price of the sale deed dated 11.1.89 (Exh.AW.1/C). That works out to Rs.125/- per sq.m. which, in our opinion, will be adequate compensation payable to the applicants.

17. Consequently, F.A. No.241/2000 shall stand dismissed and F.A. No.250/2000 shall stand allowed. The judgment/Award of the learned District Judge is

hereby partly modified, in that now the applicant will be entitled to compensation at the rate of Rs.125/- per sq.m. with all consequential and statutory benefits. The applicant is also entitled to costs from the respondents.

P.V. HARDAS, J.

N.A. BRITTO, J.

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